

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>SUZANNE BISSELL-WISNIOWSKI,</b>	:	
<b>Administratrix of the Estate of KATHI</b>	:	
<b>MCDONNELL-BISSELL,</b>	:	
<b>Plaintiff,</b>	:	
	:	<b>No. 3:03CV1252 (DJS)</b>
<b>v.</b>	:	
	:	
<b>MILFORD COUNCIL ON AGING,</b>	:	
<b>Defendant.</b>	:	

**MEMORANDUM OF DECISION**

\_\_\_\_\_The parties to this case have each motioned the court to enforce the settlement agreement reached between the plaintiff, Kathi McDonnell-Bissell (“McDonnell-Bissell”), and the defendant, the Milford Council on Aging (“Milford Council”), during a negotiation held before Magistrate Judge Thomas P. Smith on December 18, 2003.<sup>1</sup> The court **DENIES** the defendant’s motion to enforce [doc. #31] and motion for a protective order [doc. #31]. The court also **DENIES** the plaintiff’s motion for attorney fees. [doc. #32]. The plaintiff’s motion to enforce [doc. #32] is **GRANTED** for the following reasons.

**FACTS**

\_\_\_\_\_The court finds the following facts. The parties to this action met with Magistrate Judge Smith on December 18, 2003 to discuss a possible settlement in this employment discrimination action. A lengthy negotiation session at that time resulted in agreement on four key terms and the settlement of the case. Judge Smith instructed the parties that the agreement reached in

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<sup>1</sup>The current plaintiff, Suzanne Bissell-Wisniowski, was substituted for the original plaintiff on September 15, 2004. Kathi McDonnell-Bissell was present at all settlement conferences referenced herein, and she was the named plaintiff at the time the present motions were filed. The court will therefore refer to Kathi McDonnell-Bissell as the plaintiff throughout.

negotiations before him constituted a binding settlement and oral contract that was not dependent on a writing for enforcement. The oral agreement had four terms. First, the defendant agreed to pay \$80,000 to the plaintiff. Second, the defendant agreed to pay \$25,000 in legal fees. The total sum of \$105,000 is not in dispute and the court assumes the defendant will pay the amount in an expeditious manner upon resolution of the present motion. Third, defendant agreed to provide health care to the plaintiff until McDonnell-Bissell's 65<sup>th</sup> birthday on May 5, 2008. The promised health insurance was to include the plaintiff's dependents—her husband and daughter. Fourth, the plaintiff would receive a public citation honoring her good work. The settlement agreement did not contain any condition requiring McDonnell-Bissell to retire and it did not contain any terms or conditions regarding life insurance or dental coverage. Plaintiff continued to have whatever benefits she was entitled to prior to settlement. No special condition was included in the settlement to alter or amend its terms upon the event of the plaintiff's death.<sup>2</sup> Defendant, Milford Council, attempted to re-open negotiations in March 2004, delaying the enforcement of the settlement agreement and leading to the present dispute which began in May 2004, prior to McDonnell-Bissell's death.

### **DISCUSSION**

“Agreements that end lawsuits are contracts, sometimes enforceable in a subsequent suit, but in many situations enforceable by entry of a judgment in the original suit.” Janus Films, Inc. v. Miller, 801 F.2d 578, 583 (2d Cir. 1986). It is well established that parties are bound to the terms of a contract even though it is not signed and is an oral agreement. Millgard Corp. v. White Oak Corp., 224 F.Supp.2d 425, 432 (D.Conn. 2002). The only essential prerequisite for a valid settlement agreement is that all the parties mutually assent to the terms and conditions of the

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<sup>2</sup>The plaintiff, Kathi McDonnell-Bissell, passed away on May 12, 2004.

agreement. Brown, 2000 WL 88502 at \*2. A settlement is still binding even if a party has a change of heart between the time of the agreement to the terms of the settlement and the time those terms are reduced to writing. Id.

The most charitable interpretation of the events surrounding the settlement agreement in this case is that the defendant had a change of heart prior to the memorialization of the settlement in writing. The court understands that such misgivings occur, but they are insufficient to relieve the defendant of its responsibilities under the settlement agreement. Milford Council, in the briefs submitted to the court, does not deny that it must fulfill its obligations but it does dispute the nature of those obligations. McDonnell-Bissell alleges that the defendant agreed in a phone conversation to extend health care coverage to the husband and daughter of the plaintiff until May 5, 2008. Defendant argues instead that, by its own policies, it is only obligated to provide health insurance for the dependants of a deceased employee for one year after the date of death. The plaintiff's estate urges the court to consider the extension of benefits as consistent with the spirit of the settlement agreement, which is silent as to the disposition of benefits in the event of McDonnell-Bissell's death. The court finds that the settlement agreement mandates health coverage for plaintiff's dependants through 2008. The court further finds that defendant cannot reasonably claim to be excused from performance as a result of the plaintiff's death.

"There can be no question that a party may, by an absolute contract, bind himself or itself to perform things which subsequently become impossible." Chicago, M&ST.P.R.Y.Co. v. Hoyt, 149 U.S. 1, 14 (1893); see also, United States v. Winstar Corp., 518 U.S. 839, 909 n.57 (1996). This rule applies especially "where the event which causes the impossibility might have been anticipated and guarded against in the contract, or where the impossibility arises from the act or default of the promisor." Chicago, 149 U.S. at 14-15; see also Dills v. Town of Enfield, 210

Conn. 705, 717 (1989) (holding that a party claiming excuse as a result of a supervening event must show four things: (1) that the event made performance impracticable; (2) that the nonoccurrence of the event was a basic assumption of the contract; (3) the impracticability was not the fault of the party seeking to be excused from performance; and (4) the party had not assumed a greater obligation than the law imposes). The court finds that there was no possibility more obvious in this action than that the plaintiff might succumb to her long illness and pass away prior to her 65<sup>th</sup> birthday. The failure of the parties to contract for this eventuality is difficult to fathom but the court will not excuse any party's performance under the settlement agreement as a result of McDonnell-Bissell's death. The parties are bound to the terms of the agreement as it existed on December 18, 2003 and those terms include the provision of health insurance to McDonnell-Bissell and her dependants until May 5, 2008.

The court can find no basis for concluding that the provision of health insurance to the plaintiff's dependants is impossible or impracticable—indeed, it was specifically planned for and promised by the settlement agreement. The fact that the agreement failed to plan for the obvious contingency of the plaintiff's death implies to the court that the occurrence was not deemed an event that would materially alter enforcement of the settlement. The parties obviously intended to secure a resolution of this dispute by the payment of a fixed sum of damages and benefits, and that sum included health insurance for McDonnell-Bissell's dependants. Her death changes nothing as far as the settlement contract is concerned.

Finally, the court notes that this dispute has continued after the death of the plaintiff largely because of the defendant's attempts to renegotiate the settlement agreement and delay its enforcement. The court cannot equitably permit Milford Council to benefit from the delay by excusing the performance dictated by the settlement agreement. Such a result might encourage

other employers in similar situations to delay execution of their own binding settlements in the hope of receiving a similarly favorable result. This court will not undermine the enforceability of settlements in that fashion.

### **CONCLUSION**

The court finds that the settlement agreement between Kathi McDonnell-Bissell and Milford Council on Aging contemplated the provision of health insurance benefits to the plaintiff's husband and daughter until May 5, 2008. There is no legal or factual basis for excusing the defendant's performance under the settlement agreement. The court therefore orders the defendant to provide the health insurance benefits as agreed. The defendant's motion to enforce [doc. #31] and motion for protective [doc. #31] are **DENIED**. The plaintiff's motion for attorney's fees [doc. #32] is **DENIED**. The plaintiff's motion to enforce the settlement agreement [doc. #32] is **GRANTED in part**.

The Clerk of the Court is ordered to enter judgment in this case according to the following terms: (1) The defendant, Milford Council on Aging, shall pay to the estate of the plaintiff, Kathi-McDonnell Bissell, a sum of \$80,000 in pay differential; (2) Defendant shall pay to the estate of the plaintiff a sum of \$25,000 in legal fees; (3) Defendant shall provide health insurance coverage to the dependants of the deceased plaintiff—her husband and daughter—until May 5, 2008; (4) Defendant shall publically acknowledge the plaintiff's past citations for good work done on behalf of the Council for Aging.

**IT IS SO ORDERED** at Hartford, Connecticut on this 28th day of September, 2004.

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/s/DJS

**DOMINIC J. SQUATRITO**  
**UNITED STATES DISTRICT JUDGE**

